

§ 248.128

(4) That the consumer previously elected to limit the use of certain information to make marketing solicitations to the consumer;

(5) That the consumer's election has expired or is about to expire;

(6) That the consumer may elect to renew the consumer's previous election;

(7) If applicable, that the consumer's election to renew will apply for the specified period of time stated in the notice and that the consumer will be allowed to renew the election once that period expires; and

(8) A reasonable and simple method for the consumer to opt out.

(c) *Timing of the renewal notice*—(1) *In general.* A renewal notice may be provided to the consumer either:

(i) A reasonable period of time before the expiration of the opt out period; or

(ii) Any time after the expiration of the opt out period but before marketing solicitations that would have been prohibited by the expired opt out are made to the consumer.

(2) *Combination with annual privacy notice.* If you provide an annual privacy notice under the GLBA, providing a renewal notice with the last annual privacy notice provided to the consumer before expiration of the opt out period is a reasonable period of time before expiration of the opt out in all cases.

(d) *No effect on opt out period.* An opt out period may not be shortened by sending a renewal notice to the consumer before expiration of the opt out period, even if the consumer does not renew the opt out.

§ 248.128 Effective date, compliance date, and prospective application.

(a) *Effective date.* This subpart is effective September 10, 2009.

(b) *Mandatory compliance date.* Compliance with this subpart is required not later than January 1, 2010.

(c) *Prospective application.* The provisions of this subpart do not prohibit you from using eligibility information that you receive from an affiliate to make a marketing solicitation to a consumer if you receive such information prior to January 1, 2010. For purposes of this section, you are deemed to receive eligibility information when

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such information is placed into a common database and is accessible by you.

APPENDIX TO SUBPART B OF PART 248— MODEL FORMS

a. Although you and your affiliates are not required to use the model forms in this appendix, use of a model form (if applicable to each person that uses it) complies with the requirement in section 624 of the FCRA for clear, conspicuous, and concise notices.

b. Although you may need to change the language or format of a model form to reflect your actual policies and procedures, any such changes may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model forms. Acceptable changes include, for example:

1. Rearranging the order of the references to “your income,” “your account history,” and “your credit score.”

2. Substituting other types of information for “income,” “account history,” or “credit score” for accuracy, such as “payment history,” “credit history,” “payoff status,” or “claims history.”

3. Substituting a clearer and more accurate description of the affiliates providing or covered by the notice for phrases such as “the [ABC] group of companies.”

4. Substituting other types of affiliates covered by the notice for “credit card,” “insurance,” or “securities” affiliates.

5. Omitting items that are not accurate or applicable. For example, if a person does not limit the duration of the opt out period, the notice may omit information about the renewal notice.

6. Adding a statement informing the consumer how much time they have to opt out before shared eligibility information may be used to make solicitations to them.

7. Adding a statement that the consumer may exercise the right to opt out at any time.

8. Adding the following statement, if accurate: “If you previously opted out, you do not need to do so again.”

9. Providing a place on the form for the consumer to fill in identifying information, such as his or her name and address.

10. Adding disclosures regarding the treatment of opt-outs by joint consumers to comply with § 248.123(a)(2), if applicable.

Securities and Exchange Commission

Pt. 248, Subpt. B, App.

A-1—Model Form for Initial Opt Out Notice
(Single-Affiliate Notice)

A-2—Model Form for Initial Opt Out Notice
(Joint Notice)

A-3—Model Form for Renewal Notice
(Single-Affiliate Notice)

A-4—Model Form for Renewal Notice (Joint
Notice)

A-5—Model Form for Voluntary “No
Marketing” Notice

A-1—MODEL FORM FOR INITIAL OPT OUT NO-
TICE (SINGLE-AFFILIATE NOTICE)—[YOUR
CHOICE TO LIMIT MARKETING]/[MARKETING
OPT OUT]

• [Name of Affiliate] is providing this no-
tice.

• [Optional: Federal law gives you the
right to limit some but not all marketing
from our affiliates. Federal law also requires
us to give you this notice to tell you about
your choice to limit marketing from our af-
filiates.]

• You may limit our affiliates in the [ABC]
group of companies, such as our [investment
adviser, broker, transfer agent, and invest-
ment company] affiliates, from marketing
their products or services to you based on
your personal information that we collect
and share with them. This information in-
cludes your [income], your [account history
with us], and your [credit score].

• Your choice to limit marketing offers
from our affiliates will apply [until you tell
us to change your choice]/[for x years from
when you tell us your choice]/[for at least 5
years from when you tell us your choice].
[Include if the opt out period expires.] Once
that period expires, you will receive a re-
newal notice that will allow you to continue
to limit marketing offers from our affiliates
for [another x years]/[at least another 5
years].

• [Include, if applicable, in a subsequent
notice, including an annual notice, for con-
sumers who may have previously opted out.]
If you have already made a choice to limit
marketing offers from our affiliates, you do
not need to act again until you receive the
renewal notice.

To limit marketing offers, contact us [in-
clude all that apply]:

• By telephone: 1-877-###-####

• On the Web: www.---.com

• By mail: check the box and complete the
form below, and send the form to:

[Company name]

[Company address]

Do not allow your affiliates to use my
personal information to market to me.

A-2—MODEL FORM FOR INITIAL OPT OUT NO-
TICE (JOINT NOTICE)—[YOUR CHOICE TO
LIMIT MARKETING]/[MARKETING OPT OUT]

• The [ABC group of companies] is pro-
viding this notice.

• [Optional: Federal law gives you the
right to limit some but not all marketing
from the [ABC] companies. Federal law also
requires us to give you this notice to tell you
about your choice to limit marketing from
the [ABC] companies.]

• You may limit the [ABC] companies,
such as the [ABC investment companies, in-
vestment advisers, transfer agents, and
broker-dealers] affiliates, from marketing
their products or services to you based on
your personal information that they receive
from other [ABC] companies. This informa-
tion includes your [income], your [account
history], and your [credit score].

• Your choice to limit marketing offers
from the [ABC] companies will apply [until
you tell us to change your choice]/[for x
years from when you tell us your choice]/[for
at least 5 years from when you tell us your
choice]. [Include if the opt out period ex-
pires.] Once that period expires, you will re-
ceive a renewal notice that will allow you to
continue to limit marketing offers from the
[ABC] companies for [another x years]/[at
least another 5 years].

• [Include, if applicable, in a subsequent
notice, including an annual notice, for con-
sumers who may have previously opted out.]
If you have already made a choice to limit
marketing offers from the [ABC] companies,
you do not need to act again until you re-
ceive the renewal notice.

To limit marketing offers, contact us [in-
clude all that apply]:

• By telephone: 1-877-###-####

• On the Web: www.---.com

• By mail: check the box and complete the
form below, and send the form to:

[Company name]

[Company address]

Do not allow any company [in the ABC
group of companies] to use my personal in-
formation to market to me.

A-3—MODEL FORM FOR RENEWAL NOTICE (SIN-
GLE-AFFILIATE NOTICE)—[RENEWING YOUR
CHOICE TO LIMIT MARKETING]/[RENEWING
YOUR MARKETING OPT OUT]

• [Name of Affiliate] is providing this no-
tice.

• [Optional: Federal law gives you the
right to limit some but not all marketing
from our affiliates. Federal law also requires
us to give you this notice to tell you about
your choice to limit marketing from our af-
filiates.]

• You previously chose to limit our affi-
liates in the [ABC] group of companies, such

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as our [investment adviser, investment company, transfer agent, and broker-dealer] affiliates, from marketing their products or services to you based on your personal information that we share with them. This information includes your [income], your [account history with us], and your [credit score].

- Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

- By telephone: 1-877-###-####
- On the Web: *www.—.com*
- By mail: check the box and complete the form below, and send the form to:

[Company name]

[Company address]

Renew my choice to limit marketing for [x] more years.

A-4—MODEL FORM FOR RENEWAL NOTICE (JOINT NOTICE)—[RENEWING YOUR CHOICE TO LIMIT MARKETING]/[RENEWING YOUR MARKETING OPT OUT]

- The [ABC group of companies] is providing this notice.

- [Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]

- You previously chose to limit the [ABC] companies, such as the [ABC investment adviser, investment company, transfer agent, and broker-dealer] affiliates, from marketing their products or services to you based on your personal information that they receive from other ABC companies. This information includes your [income], your [account history], and your [credit score].

- Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

- By telephone: 1-877-###-####
- On the Web: *www.—.com*
- By mail: check the box and complete the form below, and send the form to:

[Company name]

[Company address]

Renew my choice to limit marketing for [x] more years.

A-5—MODEL FORM FOR VOLUNTARY “NO MARKETING” NOTICE—YOUR CHOICE TO STOP MARKETING

- [Name of Affiliate] is providing this notice.

- You may choose to stop all marketing from us and our affiliates.

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- [Your choice to stop marketing from us and our affiliates will apply until you tell us to change your choice.]

To stop all marketing, contact us [include all that apply]:

- By telephone: 1-877-###-####
- On the Web: *www.—.com*
- By mail: check the box and complete the form below, and send the form to:

[Company name]

[Company address]

Do not market to me.

Subpart C—Regulation S-ID: Identity Theft Red Flags

SOURCE: 78 FR 23663, Apr. 17, 2013, unless otherwise noted.

§ 248.201 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) *Scope.* This section applies to a *financial institution* or *creditor*, as defined in the Fair Credit Reporting Act (15 U.S.C. 1681), that is:

(1) A broker, dealer or any other person that is registered or required to be registered under the Securities Exchange Act of 1934;

(2) An investment company that is registered or required to be registered under the Investment Company Act of 1940, that has elected to be regulated as a business development company under that Act, or that operates as an employees' securities company under that Act; or

(3) An investment adviser that is registered or required to be registered under the Investment Advisers Act of 1940.

(b) *Definitions.* For purposes of this subpart, and appendix A of this subpart, the following definitions apply:

(1) *Account* means a continuing relationship established by a person with a financial institution or creditor to obtain a product or service for personal, family, household or business purposes. Account includes a brokerage account, a *mutual fund* account (*i.e.*, an account with an open-end investment company), and an investment advisory account.

(2) The term *board of directors* includes:

(i) In the case of a branch or agency of a foreign financial institution or